

court, until the election of new judges. This section construed in connection with art. 8, sec. 1, of the Constitution of 1851. *State v. Manly*, 1 Md. 140.

This section referred to in construing art. 4, sec. 11, and art. 5, sec. 2—see notes thereto. *Groome v. Gwinn*, 43 Md. 633 (concurring opinion).

See notes to art. 4, sec. 42; art. 2, sec. 11; art. 6, sec. 1, and art. 7, sec. 3.

Sec. 4. If at any election directed by this Constitution, any two or more candidates shall have the highest and an equal number of votes, a new election shall be ordered by the Governor, except in cases specially provided for by this Constitution.

Sec. 5. In the trial of all criminal cases, the jury shall be the Judges of Law, as well as of fact.

Accused may waive right of trial by jury. *Rose v. State*, Daily Record, Jan. 31, 1940. In view of this section, any instructions given the jury are but advisory and in no manner binding except as to questions as to what shall be considered evidence. The court cannot be required by counsel or jury to give instructions either on the law, or on the legal effect of evidence. *Bloomer v. State*, 48 Md. 538; *Broll v. State*, 45 Md. 359; *Wheeler v. State*, 42 Md. 570; *Esterline v. State*, 105 Md. 636; *Jules v. State*, 85 Md. 313; *Ridgely v. State*, 75 Md. 513; *Goldman v. State*, 75 Md. 623; *Beard v. State*, 71 Md. 279; *Baltimore, etc., Co. v. State*, 63 Md. 582.

The court has the right to advise the jury in a criminal case, although it cannot be required to do so. If the instruction given, however, is erroneous and the jury has followed it to the plain injury of the traverser, the case may be reversed on this ground. *Cochran v. State*, 119 Md. 552; *Ridgeley v. State*, 75 Md. 513; *Beard v. State*, 71 Md. 281.

The jury has no power in criminal cases to pass on the constitutionality of a law; hence that question may not be argued to the jury. This section is merely declaratory and does not alter the pre-existing law regulating the powers of the court and jury in criminal cases. *Franklin v. State*, 12 Md. 249 and 245; *Sparf v. United States*, 156 U. S. 152 (dissenting opinion); *Bell v. State*, 57 Md. 120.

Where a party elects to be tried by a court without a jury, the court is substituted for the jury, and has the same duties and functions in passing upon the guilt of the accused. *League v. State*, 36 Md. 264.

The act of 1878, ch. 415, sec. 10, conferring jurisdiction upon justices of the peace to try and commit to the house of correction vagrants and disorderly persons, is constitutional. *State v. Glenn*, 54 Md. 599.

The court in criminal cases, as in civil cases, determines the admissibility of testimony and the competency of witnesses. *Jules v. State*, 85 Md. 313.

The court may state to the jury the legal effect of evidence. *Bell v. State*, 57 Md. 120.

The legal effect of evidence is a question for the jury under this section. *World v. State*, 50 Md. 55.

See art. 21 of the Declaration of Rights, and notes to art. 59, sec. 4, An. Code.

In view of this section, motion of traverser's counsel to strike out evidence cannot be entertained in criminal cases. Court only determines admissibility of testimony and competency of witnesses. *Rasin v. State*, 153 Md. 435.

In view of this section, legal sufficiency of testimony to sustain indictment may not be submitted to trial court as question of law; admissibility of evidence is for court. *Deibert v. State*, 150 Md. 695.

While in view of this section court cannot give binding instructions in criminal cases, advisory instructions may be given; this practice long sanctioned in Maryland. *Klein v. State*, 151 Md. 489.

No distinction under this section between motion in arrest of judgment and motion to strike out verdict and judgment. This section applied. *Willis v. State*, 153 Md. 617.

This section referred to in holding comment of court in criminal case prejudicial error. *Newton v. State*, 147 Md. 87.

This section is of equal force and not in conflict with arts. 2 and 5 of the Declaration of Rights. *Price v. State*, 160 Md. 672.

Cited but not construed in dissenting opinion in *Price v. State*, 159 Md. 517.

Cited but not construed in *Thomas v. Penna. R. Co.*, 162 Md. 516; *Vogel v. State*, 163 Md. 272.

Where state's attorney argued to jury the probative force of evidence, that body being the proper one under this section, it was held that there was no appeal on questions of correctness of arguments. *Davis v. State*, 168 Md. 12.

This section referred to in *State v. Coblenz*, 169 Md. 167.

Question of sufficiency of corroboration of testimony of accomplice to sustain conviction for gaming is for jury, or court, to determine. *Folb v. State*, 169 Md. 209.

Since jurors, in criminal cases, are the judges of law as well as of fact, it is improper for court to deny counsel privilege of stating the law to the jury. *Wilkerson v. State*, 171 Md. 287.

The province of the Court is to pass on admissibility of evidence; not proper to strike out all evidence when part is admissible. *Kirschgessner v. State*, 174 Md. 201.